TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 70

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS, DANVILLE, ILLINOIS, AND THE VETERANS' ADMINISTRATION, PETITIONERS

vs.

HARVEY M. WOOD, AS ADMINISTRATOR OF THE ESTATE OF WALTER SEARLES, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 19, 1936
CERTIORARI GRANTED OCTOBER 12, 1936

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 70

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS, DANVILLE, ILLINOIS, AND THE VETERANS' ADMINISTRATION, PETITIONERS

vs.

HARVEY M. WOOD, AS ADMINISTRATOR OF THE ESTATE OF WALTER SEARLES, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

	Page
Record from D. C. U. S., Eastern Illinois	1
Placita	1
Petition for leave to prosecute suit as a poor person	2
Order granting leave to prosecute suit as a poor person	4
Declaration	5
Stipulation of facts	12
General issue plea	18
Memorandum of the Court, Lindley, J	18
Motion to arrest judgment	23
Order overruling motion to arrest judgment	24
Motion for new trial	25
Order overruling motion for new trial	25
Judgment	26
Notice of appeal	26
Petition for appeal	27
Assignments of error	28
Motion to amend assignments of error	28
Order allowing motion to amend assignments of error	29
Order allowing appeal	30
Praecipe for record	31
Certificate of clerk	32
Citation and service	33
Proceedings in U. S. C. C. A., Seventh Circuit	35
Clerk's certificate	35
Caption	35
Motion to dismiss	36
Minute entry of argument and submission	37
Opinion, Alschuler, J	38
Judgment	42
Clerk's certificate	42
Order allowing certiorari	45

1 Pleas in the District Court of the United States within and for the Eastern District of Illinois at a special term thereof, begun and held in the United States Court Room, in the City of Danville in said district, before the Honorable Walter C. Lindley, Judge of said Court on the first Monday of November, in the year of our Lord one thousand nine hundred and thirty four, and of the Independence of the United States of America, the one hundred and fifty-ninth year. Placi

D. H. REED,
Clerk.

Harvey M. Wood, as Administrator in the Estate of Walter Searles, Dec'd.

vs.

The National Home for Disabled Volunteer Soldiers, Danville, Illinois, the Veterans Administration Home of Danville, Illinois, Ralph W. Jones, as Accountant of said Veterans Administration Home, Danville, Illinois and Walter T. Christy, as Special Disbursing Agent of said Veterans Administration Home, Danville, Illinois and Ralph W. Jones, Treasurer of National Home for Disabled Volunteer Soldiers, Danville, Illinois.

} Law No. 247-D.

Be it remembered that heretofore, to-wit: on the 16th day of September, A. D. 1931, came E. L. McLaughlin and Ray M. Foreman, Attorneys for Harvey W. Mood, as Administrator in the Estate of Walter Searles, Deceased, plaintiff herein and filed in the office of the Clerk of the United States District Court for the Eastern District of Illinois, a Petition to prosecute as a poor person, in a cause entitled Harvey M. Woods, as Administrator, in the Estate of Walter Searles, deceased *vs.* The National Home for Disabled Volunteer Soldiers, Danville, Illinois, the Veterans Administration Home of Danville, Illinois, Ralph W. Jones, as Accountant of

said Veterans Administration Home, Danville, Illinois
2 and Walter T. Christy as Special Disbursing Agent of said Veterans Administration Home, Danville, Illinois and Ralph W. Jones, Treasurer of National Home for Disabled Volunteer Soldiers, Danville, Illinois, Law No. 247-D, which said Petition was and now is in words and figures, the following to wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Eastern District of Illinois.

Harvey M. Wood, as Administrator in the Estate of Walter Searles, deceased. *vs.* The National Home for Disabled Volunteer Soldiers, Danville, Illinois, the Veterans Administration Home of Danville, Illinois, Ralph W. Jones, as Accountant of said Veterans Administration Home, Danville, Illinois and Walter T. Christy, as Special Disbursing Agent of said Veterans Administration Home, Danville, Illinois and Ralph W. Jones, Treasurer of National Home for Disabled Volunteer Soldiers, Danville, Illinois.	No. 247-D.

APPLICATION FOR LEAVE TO INSTITUTE AND PROSECUTE SUIT AS A POOR PERSON.

HARVEY M. WOOD, being first duly sworn on oath, deposes and says that he is a resident of the City of Danville, County of Vermilion, State of Illinois, and has been for the last two years next preceding the filing of this application; that he was upon the 12th day of March A. D. 1931, duly appointed the administrator of the estate of Walter Searles, deceased, in the probate court, County of Vermilion, State of Illinois; that this affiant was appointed administrator upon

the request of one of the creditors of said Walter Searles, deceased;

That your affiant finds that the said Walter Searles, deceased, left no property whatsoever save and excepting a certain sum of money of approximately Four Thousand ($4000.00) Dollars, which sum of money is now, so your affiant is informed and believes, in the hands of Walter T. Christy, Special Disbursing Agent of the Veterans Administration Home at Danville, Illinois; that said sum of money represents the proceeds of pension moneys which had accrued to the said Walter Searles prior to his decease; that said Walter T. Christy, Special Disbursing Agent of the Veterans Administration Home at Danville, Illinois; on the basis that said sums of money belong to and have vested in the general fund of the Veterans Administration Homes of the United States War Veterans, in accordance with Sections 136
4 and 139 of Chapter 3, Title 24 of the Code of Laws of the United States of America as in force December 6, 1926, whereas said fund belongs to this affiant as administrator of the estate of the said Walter Searles, deceased, for the benefit of the sole heir at law of the said Walter Searles, deceased, said heir at law being one Herbert A. Searles of Spokane, Washington; that your affiant is of the opinion and verily believes that said moneys belong to and are the property of this affiant by virtue of said Section 136, Chapter 3, Title 24 of said Code of Laws of the United States of America, in force December 6, 1926, and that such moneys will be recovered from the said Walter T. Christy, Special Disbursing Agent of the Veterans Administration Home at Danville, Illinois, if this affiant be permitted to institute suit in this court for the recovery of the same;

That this affiant has no money or other property whatsoever which has accrued to him from the estate of the said Walter Searles, deceased, by which or from which he might pay the costs for instituting said suit in this court; that this affiant is a poor person and unable to pay said costs himself as administrator, and that this affiant believes that he has a meritorious cause of action against the said Walter T. Christy, Special Disbursing Agent of the Veterans Administration Home at Danville, Illinois,

Wherefore, this affiant requests this court to permit this affiant to institute suit in this court in his name as Harvey M. Wood, Administrator in the estate of Walter Searles, deceased, and against The National Home for Disabled Volun-

teer Soldiers, the Veterans Administration Home, of Danville, Illinois, Ralph W. Jones, Accountant of said Veterans Administration Home, Danville, Illinois, and Walter T. Christy, Special Disbursing Agent of said Veters Administration Home, Danville, Illinois, and Ralph W. Jones, Treasurer of National Home for Disabled Volunteer Soldiers, Danville, Illinois, said suit to be instituted by this person against said persons without the pre-payment of the usual costs or fees incidental to the filing and prosecution of such suit in this court.

HARVEY M. WOOD.

Subscribed and sworn to before me this ..... day of September A. D. 1931.

HELEN M. SADLER,
Notary Public.

(Seal)

5 Endorsed: * * (Caption—247-D) * *. Application for Leave to Institute and Prosecute Suit as a Poor Person. Filed Sep. 16, 1931, Douglas H. Reed, Clerk. Law Offices, E. L. McLaughlin and Ray M. Foreman. Danville, Illinois.

6 Endorsed: * * (Caption—247-D) * *. Application for Leave to Institute and Prosecute Suit as a Poor Person. Filed Sep. 16, 1931, Douglas H. Reed, Clerk. Law Offices, E. L. McLaughlin and Ray M. Foreman, Danville, Illinois.

7 And on the same day, to-wit: the 16th day of September, A. D. 1931, the following proceedings were had in said Court in said Cause and entered of record, to-wit:

8 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—247-D) * *

ORDER.

Upon consideration of the application for leave to institute and prosecute suit as a poor person in the case herein, at this time presented to this Court, the Court finds that the plaintiff herein is a poor person and has a meritorious cause of action against the defendants herein and it is hereby Ordered by this Court that the said plaintiff herein be permitted to institute and prosecute his suit against the defendants herein as a poor person and shall not be required to prepay filing

fees or any and all other court costs or marshals fees necessary for the institution and prosecution of his said suit.

WALTER C. LINDLEY,
Judge.

Endorsed: * * (Caption—247-D) * *. Order. Ent. Sept. 16, 1931, D. H. Reed, Clerk.

9 And afterwards, on to-wit: the 26th day of February, A. D. 1932, there was filed in the office of the Clerk of said Court in said Cause, a Declaration, which said Declaration, was and now is in words and figures following, to-wit:

10 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—247D) * *

DECLARATION.

Harvey M. Wood, as Administrator of the Estate of Walter Searles, deceased, Plaintiff by Ray M. Foreman and Eldon L. McLaughlin, his attorneys, complains of the National Home for Disabled Volunteer Soldiers, Danville, Illinois, Veterans Administration Home, Danville, Illinois, Ralph W. Jones, as accountant of said Veterans Administration Home, Danville, Illinois, Walter T. Christy, as Special Disbursing Agent of said Veterans Administration Home, Danville, Illinois, and Ralph W. Jones, Treasurer of the said Veterans Administration Home, Danville, Illinois, Defendants, in a plea of trespass on the case on promises and avers that the plaintiff is a citizen and resident of the State of Illinois, and that the defendant, the National Home for Disabled Volunteer Soldiers, Danville, Illinois, is a corporation created under the authority of the Congress of the United States and is located at or near the City of Dayton, Ohio; with a Branch of said corporation at Danville, Illinois, which said corporation was by Act of Congress approved upon July 3, 1930 dissolved and all its duties, obligations, rights, powers, etc. transferred to the Veterans Administration of the City

11 of Washington, District of Columbia, as a part of the Government of the United States; that the Veterans Administration Home of Danville, Illinois is a part of the Veterans Administration, City of Washington, District of Columbia, created and existing by virtue of the Act of Congress

approved July 3, 1930 and by virtue of such Act is the successor to the National Home for Disabled Volunteer Soldiers, and the Danville Branch thereof; that the defendant, Ralph W. Jones is a citizen and resident of the State of Illinois and was upon September 17, 1926, Treasurer of the Branch of the National Home for Disabled Volunteer Soldiers, Danville, Illinois, and as such Treasurer had in his custody and under his control, all of the funds of the said Branch of the National Home for Disabled Volunteer Soldiers, Danville, Illinois, and particularly the funds in controversy in this cause, and the said Ralph W. Jones is at present the accountant of the said Veterans Administration Home of Danville, Illinois and as such accountant he has in his custody and under his control all funds formerly in the custody or under the control of the Treasurer of the National Home for Disabled Volunteer Soldiers, Danville, Illinois and particularly the funds in controversy in this cause; that Walter T. Christy is a citizen and resident of the State of Illinois and is the Special Disbursing Agent of the Veteran's Administration Home, Danville, Illinois; that as such special disbursing agent is the successor in office to the former treasurer of the former Branch of the National Home for Disabled Volunteer Soldiers Danville, Illinois and has in his custody and under his control all the funds of the said Veterans Administration Home, Danville, Illinois which had formerly been in the custody and possession of said Ralph W. Jones as Treasurer of the said Branch of said National Home for Disabled Volunteer Soldiers, Danville, Illinois and particularly the funds in controversy in this cause;

12 And the Plaintiff further avers that this is a suit of a civil nature and that the amount involved in this suit is more than $3,000.00 exclusive of interests and costs and arises under and by virtue of the laws and statutes enacted by the Congress of the United States of America, in particularly Section 136, Title 24 of the Code of Laws of the United States of America, in force December 6, 1926.

And the Plaintiff further avers that the decedent Walter Searles, during all times hereinafter mentioned and up to the time of his death, was an honorably discharged volunteer soldier of the Civil War and a member of the late Company #E 19th Michigan Infantry, discharged July 16, 1865;

And the Plaintiff further avers that the said decedent died on or about September 16, 1926 and that prior to such decease, the decedent was a duly enrolled and recognized pen-

sioner under the laws of the United States and continued so to be up to and including the day of his death, to-wit: September 16, 1932 and as such pensioner was entitled to be paid and was paid as hereinafter set forth the full amount of his pension money so granted him as such disabled volunteer soldier until the date of his death as hereinabove set forth.

And the plaintiff further alleges that on or about October 19, 1924 the said deceased made application for membership and afterwards became a member of the Branch of the National Home for Disabled Volunteer Soldiers, Danville, Illinois, now known as Veteran Administration Home, Danville, Illinois and afterwards became a member of said Home and continued so to be an inmate and member of said Home until the date of his death, September 16, 1926.

13 And the Plaintiff further avers that on the date of the death of said decedent he left as his sole and only surviving heir at law his son, Herbert A. Searles, a citizen and resident of Spokane, State of Washington, said son being still living.

And the Plaintiff further avers that during all or most of the time the date on which said Walter Searles, deceased, became an inmate of said Branch of the National Home for Disabled Volunteer Soldiers, Danville, Illinois, to the date of his death, to-wit: September 16, 1926, the pension money granted and allowed him under the Pension laws of the United States was paid in quarterly or monthly payments and in accordance with the existing laws of the United States relating to the payment of pensions to disabled volunteer soldiers as inmates and members of such Branch of the National Home for Disabled Volunteer Soldiers, Danville, Illinois to the treasurer and superintendent of the post fund of said Branch of the National Home for Disabled Volunteer Soldiers, at Danville, Illinois for the use and benefit of the said Walter Searles, deceased, which said pension money so received by the said Treasurer or superintendent was placed to the credit of said Walter Searles, deceased, upon the books of said Branch of National Home for Disabled Volunteer Soldiers, Danville, Illinois and part of such funds so credited to the account of said Walter Searles, deceased, as aforesaid was paid over to the said Walter Searles, deceased, as he had need therefor and part of said funds were paid over to the son of Walter Searles, deceased, namely the said Herbert A. Searles for the expenses of a certain trip incurred by said Herbert A. Searles from Spokane, Washington, at or after the date of the death of said Walter Searles, deceased.

And the Plaintiff further avers that after deducting all just credits and set offs, there remained at the time of the death of said Walter Searles, deceased, in the hands of said Treasurer of the said National Home for Disabled Volunteer Soldiers, Danville, Illinois for the use of and benefit of said Walter Searles, deceased, or his next of kin or heirs at law, or in the hands of the successor in office to the then Treasurer of the Branch of the National Home for Disabled Volunteer Soldiers, the sum of $3,300.00, all of which sum plus legal interest thereon still remains in the hands of the aforesaid defendants or their successors in office or their successors to the duties, rights and obligations such as pertain to the care and custody aforesaid of the sum of money received by said officials for the use and benefit of said Walter Searles, deceased, as aforesaid.

And the Plaintiff further avers that at the time of the death of Walter Searles, deceased, the said Walter Searles, deceased, left no Will in Writing or otherwise nor entered into any express contract making any disposition in any manner of money, or of property either real, personal or mixed, of which he might die seized.

And the Plaintiff further avers that neither at the time the said Walter Searles, deceased, became an inmate and member of said Branch of the National Home for Disabled Volunteer Soldiers, Danville, Illinois, nor at any time afterwards did said Walter Searles, deceased, make or agree to make any assignment or contract either expressed or implied relating to the disposition of any property, real, personal or mixed of which he might die seized in the event that he left any heirs at law or next of kin on the date of his decease.

And the Plaintiff further avers that he has made due and proper demand upon the defendants and each of them, as in such case by law required, for the money, property and effects of the said Walter Searles, deceased, which remained in the hands of said defendants upon the death of said Walter Searles, deceased, but that the defendants and each of them refused and still refuse to turn over any and all money, property or effects in their hands to this plaintiff but continue to retain the same to their use and benefit.

And the plaintiff further avers that under and by virtue of laws of descent and distributions of the state of Illinois in full force and effect on the day of the death of the said Walter Searles, deceased, to-wit: September 16, 1926 and for a long time prior to the establishment of the said Branch of the Na-

tional Home for Disabled Volunteer Soldiers, Danville, Illinois, all of the estate of said Walter Searles, deceased, situated and being in the State of Illinois became subject to and governed by the laws of the State of Illinois relating to the estates of deceased persons in said State who die intestate.

And the plaintiff further avers that under and by virtue of the laws of the United States Government all personal property owned by a pensioner at the time of his death including money or choses in action held by him and not disposed of by Will, whether such property be the proceeds of pensions or otherwise derived shall, in the event that said pensioner leave at his death no heirs at law nor next of kin, vest in and become the property of the Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance.

And the plaintiff further avers that he is the duly appointed and qualified administrator of the Estate of Walter Searles, deceased and as such Administrator is entitled to sue for the recovery of all of said funds or moneys in the hands of the defendants for the use and benefit of said Walter Searles, deceased, his heirs at law or next of kin, of which heirs at law or next of kin there is living at present one son of
16 the said Walter Searles, deceased, by name, Herbert A. Searles.

And the plaintiff further avers that by means of the aforesaid the defendants have become liable to pay to the plaintiff the aforesaid sum but although being so liable as aforesaid to pay the said sum the defendants have not paid the same nor any part thereof to the plaintiff but refuse so to do to the damage of the plaintiff to-wit: $4,000.00 and therefore he brings his suit, etc.

Second Count.

For that Whereas also Harvey M. Wood, as Administrator of the Estate of Walter Searles, deceased, plaintiff, is a citizen and resident of the State of Illinois, and that the defendant, the National Home for Disabled Volunteer Soldiers, Danville, Illinois, is a corporation created under the authority of the Congress of the United States and is located at or near the City of Dayton, Ohio; with a branch of the said corporation at Danville, Illinois, which said corporation was by Act of Congress approved upon July 3, 1930, dissolved and all its duties, obligations, rights, powers, etc. transferred

to the Veterans Administration City of Washington, District of Columbia, as a part of the Government of the United States; that the Veterans Administration Home of Danville, Illinois is a part of the Veterans Administration, City of Washington, District of Columbia, created and existing by virtue of the Act of Congress approved July 3, 1930 and by virtue of such Act is the successor to the National Home for Disabled Volunteer Soldiers, and the Danville Branch thereof; that the defendant, Ralph W. Jones is a citizen and resident of the State of Illinois and was upon September 17, 1926, Treasurer of the Branch of the National Home for
17 Disabled Volunteer Soldiers, Danville, Illinois, and as such Treasurer had in his custody and under his control, all of the funds of the said Branch of the National Home for Disabled Volunteer Soldiers, Danville, Illinois, and particularly the funds in controversy in this cause, and the said Ralph W. Jones is at present the accountant of the said Veterans Administration Home of Danville, Illinois and as such accountant he has in his custody and under his control all funds formerly in the custody or under the control of the Treasurer of the National Home for Disabled Volunteer Soldiers, Danville, Illinois and particularly the funds in controversy in this cause; that Walter T. Christy is a citizen and resident of the State of Illinois and is the Special Disbursing agent of the Veterans Administration Home, Danville, Illinois; that as such special disbursing agent is the successor in office to the former Treasurer of the former branch of the National Home for Disabled Volunteer Soldiers, Danville, Illinois and has in his custody and under his control all the funds of the said Veterans Administration Home, Danville, Illinois which had formerly been in the custody and possession of said Ralph W. Jones as Treasurer of said Branch of said National Home for Disabled Volunteer Soldiers, Danville, Illinois and particularly the funds in controversy in this cause; and whereas plaintiff further avers that this is a suit of a civil nature and that the amount involved in this suit is more than $3,000.00 exclusive of interests and costs and arises under and by virtue of the laws and statutes enacted by the Congress of the United States of America, in particularly Section 136, Title 24 of the Code of Laws of the United States of America, enforced December 6, 1926.

And For That, Whereas, heretofore, in the lifetime of said Walter Searles, the defendants, on to-wit: September 17,

1926, in the County of Vermilion, and State of Illinois became and was indebted to the said Walter Searles in the sum of $4,000.00 for money before that time lent by the said Walter Searles to the defendant at his request; and in the like sum for money before that time paid and expended by the said Walter Searles for the use of the defendants at his
18 request; and in a like sum of money before that time received by the defendants for the use of said Walter Searles; and in a like sum for interest on divers sums of money before that time forborne by the said Walter Searles to the defendants at his request, for the divers spaces of time before then elapsed; and, being so indebted, the defendants, in consideration thereof, then and there promised the said Walter Searles to pay him, on request, the several sums of money so due to him as aforesaid; yet the defendants though requested, have not paid the same, or either of them, or any part thereof, to the said Walter Searles, in his lifetime nor to the plaintiff since the death of the said Walter Searles, but refuse so to do, to the damage of the plaintiff of Four Thousand Dollars ($4,000.00), and therefore, he brings his suit, etc.

HARVEY M. WOOD, as Admstr. of the estate of Walter Searles, deceased.

RAY M. FOREMAN,
ELDON L. MCLAUGHLIN,
Attorneys for Plaintiff.

Endorsed: * * (Caption—247D) * * Declaration. Filed Feb. 26, 1932, Douglas H. Reed, Clerk. Ray M. Foreman and Eldon L. McLaughlin Danville, Illinois.

19 And afterwards, on to-wit: the 8th day of February, A. D. 1934, there was filed in the office of the Clerk of said Court in said Cause, a Stipulation of Facts, which said stipulation was and now is in words and figures following, to-wit:

20 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—247-D) * *

STIPULATION OF FACTS.

It is hereby stipulated by and between the above entitled parties by their respective attorneys that:

(1) That Walter Searles was an honorably discharged volunteer soldier of the War of the Rebellion and a member of Company E 19th Regiment, Michigan Infantry and that he died September 16, 1926 while an inmate and member of the Danville Branch of the National Home for Disabled Volunteer Soldiers, a corporation, located at Danville, Illinois.

(2) That Walter Searles, deceased, left him surviving one only son and heir at law, to-wit: Herbert A. Searles, then aged fifty-three years, who resides at Spokane, Washington, of which state he is a citizen and a resident.

(3) That Harvey M. Wood, is the duly qualified and acting administrator of the estate of Walter Searles, deceased and is the plaintiff in this suit.

(4) That the National Home for Disabled Volunteer Soldiers, Danville, Illinois, is a branch of the National Home for Disabled Volunteer Soldiers, a corporation, created by an Act of Congress of the United States, having its headquarters at Dayton, Ohio, the said Danville Branch being
21 a part of said corporation and under the management and control of the same. That Ralph W. Jones was the Treasurer of said Danville Branch of the National Home for Disabled Volunteer Soldiers, located at Danville, Illinois prior to and at the time of the death of said Walter Searles, and continued as such Treasurer until the aforesaid corporation became dissolved by an Act of Congress approved July 3, 1930, and as such Treasurer had or has in his custody and under his control the funds of said Danville Branch of the National Home for Disabled Volunteer Soldiers, and particularly the funds involved in this case. That Ralph W. Jones is the accountant of the Veterans Administration Home located at Danville, Illinois, a branch of the Veterans Administration of the United States of America, created by an Act of Congress approved on July 3, 1930 and the successor to the former National Home for Disabled Volunteer Soldiers, a corporation, and subject to and possessed of all the duties, obligations, rights, powers, etc. formerly pos-

sessed by the said National Home for Disabled Volunteer Soldiers, a corporation, and that the said Ralph W. Jones as accountant of said Veterans Administration Home of Danville, Illinois is successor in office to a part of the duties formerly discharged by the Treasurer of the Danville Branch of the National Home for Disabled Volunteer Soldiers, a corporation, and as such accountant has custody of a part of the funds of the Veterans Administration, Danville, Illinois. That Walter T. Christy is the Special Disbursing Agent of the Veterans Administration as aforesaid, and as such special disbursing agent is the successor in office to a part of the duties formerly discharged by the Treasurer of the Danville Branch of the National Home for Disabled Volunteer Soldiers and as such successor in office and special disbursing agent he has in his custody and under his control the
22 funds of the Veterans Administration Home, Danville, Illinois, and in particular, of the funds in controversy.

(5) That Walter Searles deceased, was enrolled and recognized as a pensioner under the laws of the United States about the year 1904, and as such pensioner was entitled to receive a pension up to and including the date of his death, September 16, 1926; that said Walter Searles was at various times until his death a member of the several branches of the National Home for Disabled Volunteer Soldiers located in the several places and cities of the United States, and from time to time received his aforesaid pension money from the various Treasurers of the respective branches in which, at the several times, he was a member. That prior to October 17, 1924 Walter Searles applied for admission to the Danville Branch of the National Home for Disabled Volunteer Soldiers, located at Danville, Illinois and was duly enrolled as a member thereof upon October 19, 1924; and that at the time of said admission, said Walter Searles was approximately 81 years of age.

(6) That shortly prior to October 17, 1924 and until September 16, 1926, the date of the death of said Walter Searles, the pension money granted and allowed to Walter Searles, deceased, under the pension laws of the United States, was paid in installments of $72.00 per month according to the laws of the United States existing from time to time during said period relating to the payments of pension money to Disabled Volunteer Soldiers who were members of the National Home for Disabled Volunteer Soldiers; that in accordance with said laws, said pension money was paid to the

Treasurer of the Danville Branch of the National Home for Disabled Volunteer Soldiers at Danville, Illinois to be disbursed to the said Walter Searles or for his benefit. That at the time of the death of the said Walter Searles there was a balance of pension money due him from the Treas-
23 urer of the United States for a part of the month of September 1926, to-wit September 4, 1926 to September 15, 1926 inclusive, amounting to the sum of $8.80; That at the time of the death of said Walter Searles, September 16, 1926, there was on deposit to the credit of Walter Searles now deceased, with the Treasurer of the Danville Branch as aforesaid, pension money paid to the said Treasurer as aforesaid as and for the pension of Walter Searles a sum of money amounting to approximately Eighteen Hundred dollars ($1800.00) of which sum there has been paid to the said Herbert A. Searles, the son of the said Walter Searles, deceased, as and for expenses in making a trip from his residence at Spokane, Washington to Danville, Illinois and back, after attending the funeral of his father, the said Walter Searles, the sum of approximately $200.00, and there has also been paid out of said sum to the sister of said Walter Searles, the sum of approximately $50.00 for expenses in making a trip to and from Richland, Michigan, the residence of said sister of Walter Searles, deceased, to Danville; that in addition to said expenditures made from said sum there was deducted from the pension moneys received by the Treasurer of said Danville Branch between August 17, 1924 and September 16, 1926, various small sums of money in accordance with the orders drawn therefor by the Chief Surgeon of the Danville Branch as aforesaid, said sums of money being used for extra expenses for the said Walter Searles while in the hospital at the said Danville Branch as aforesaid; that there is now remaining on deposit after deductions of the aforesaid amounts to the credit of said Walter Searles, deceased, with the Treasurer of the Danville Branch as aforesaid or to his successor in office or to the President of the Board of Managers of the National Home for Disabled Volunteer Soldiers, a corporation, or its successor, the Veterans Administration, the sum of Fifteen hundred forty six and 47/100 Dollars
24 ($1546.47 plus interest thereon at five (5%) per cent per annum since October 1, 1926, of which said sum and the interest thereof, no part had or has been paid to the said Walter Searles, deceased, nor to his only son and heir at law, Herbert A. Searles, nor to the Administrator of Walter

Searles, Deceased, plaintiff herein, nor to any other person for the benefit of the heirs at law or next of kin of the said Walter Searles, deceased;

(7) That the said Walter Searles died intestate at Danville, Illinois, of which state he was at the time of his death a resident and citizen, and that under the laws of descent and distribution of the State of Illinois, his personal property would go to his son and only heir at law, Herbert A. Searles, for whose use the suit herein is being prosecuted by this plaintiff as administrator of the Estate of said Walter Searles, there being no debts in the estate of Walter Searles. That the said Herbert A. Searles, the only child and heir at law of said Walter Searles, Deceased, is now approximately 53 years of age, and is not a minor child, but that said Herbert A. Searles had been up to and until the date of the death of said Walter Searles, a dependent of the said Walter Searles, the said Herbert A. Searles having suffered when but a baby, a severe rupture or hernia, which has incapacitated him from such date until the present time from doing the ordinary manual labor necessary to make a living for himself; that the said Herbert A. Searles has not been qualified by education or otherwise to earn a living; that the said hernia on the body of said Herbert A. Searles has rendered him permanently dependent upon others for financial support; that the said Walter Searles, deceased, did at various times send or pay to his son, Herbert A. Searles, the pension moneys received by him; that the said Walter Searles, deceased, did at various times state to his son, Herbert A. Searles, and to others, that he considered his son dependent upon him for support; that the said Walter Searles at various times declared, both to the said Herbert A. Searles and to others, that he intended that all of his pension moneys which he might leave in any wise, or any balance of pension moneys that might be due him in any wise, should go to his son, the said Herbert A. Searles, for the support of the said Herbert A. Searles.

(8) That upon the 23d day of March, A. D. 1931 there was sent to the Veterans Administration, Bureau of National Homes, Washington, D. C. in the names of Harvey M. Wood, Administrator in the Estate of Walter Searles, deceased, and Herbert A. Searles, a petition for the allowance to said parties of the sums of money remaining in the hands of the Veterans Administration or its proper officials, as accrued pension moneys (or pension moneys) due Walter Searles, de-

ceased, at the date of his death, and a demand that such moneys be turned over to such petitioners, including as a part of said petition and demand a statement of facts substantially as set forth herein and an assertion of claim under various sections of the Statutes and Laws of the United States in force at the time said Walter Searles became deceased, and in force at the date of such petition and demand; and that upon the 25th day of March, 1931, C. W. Wadsworth, Director of said Veterans Administration did in behalf of said Veterans Administration, acknowledge receipt of such petition and demand and deny allowance thereof; that in addition to the aforesaid petition and demand, other petitions and demands for said pension funds were made upon the officers of the National Home for Disabled Volunteer Soldiers immediately and within one year following the death of the said Walter Searles, by said Herbert Searles, his legal heir.

(9) That no conservator or guardian had or has ever in the lifetime of said Walter Searles, deceased, been appointed by any Court of competent jurisdiction over the person or the estate of the said Walter Searles, now deceased.

(10) That the following rules and regulations concerning the disbursement of pension funds in the hands of the branch treasurer were in effect at the time of the death of Walter Searles, to-wit:

"Home Regulations.

"253. Pension money held by a Branch Treasurer will be paid to, and on account of, a pensioner, subject to the following rules and regulations:

First: A pensioner not classed as incompetent may direct, in writing, that all or any portion of his pension money be sent to his wife, minor child, or a dependent relative.

Second: The Governor of a Branch may prevent a hurtful or wasteful or extravagant use of the pension money in any case by retaining a sufficient amount until, in his opinion, the danger of harm or waste or extravagance has passed.

Third: Pension money standing to the credit of a member sick in hospital will be paid directly to him in such amounts only as are necessary for his personal use. Upon his order payments may be made to liquidate his indebtedness or otherwise protect his interests.

Fourth: In the case of a member classed by the Surgeon as 'incompetent', payment of his pension money may be made as follows:

(a) To the Surgeon in such small sums as may be necessary for the personal expenses of the member.

(b) To a wife, minor child, or dependent relative, upon the authority of the President of the Board of Managers. The evidence upon which any such payment is made will be filed with the retained copy of the first voucher so paid.

27 (c) To pay taxes, insurance, or other charges, when necessary to protect the interests of the member.

Fifth: Any balance due the pensioner when discharged from the Home or dropped from the rolls shall be paid to him."

(11) That the said Walter Searles did upon the date of his admission to the Danville Branch of the National Home for Disabled Volunteer Soldiers sign the following agreement, which continued in effect until the date of his death:

"I agree that in the event of my death while a member of the National Home for Disabled Volunteer Soldiers, leaving no heirs or next of kin, all personal property owned by me at the time of my death, including money or choses in action held by me and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of the Board of Managers of the National Home for D. V. S. for the sole use and benefit of the post fund of said Home, and that all my personal property shall upon my death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after my death."

(12) That the Court has jurisdiction of the parties plaintiff and defendant herein and of the subject matter hereof.

(13) That the statutes of the State of Illinois and United States shall be deemed admitted in evidence.

RAY M. FOREMAN,
ELDON L. MCLAUGHLIN,
Attorneys for plaintiff.
WALTER E. ACKERMANN,
Attorney for defendants.

Endorsed: Assumpsit. * * (Caption—247D) * * Stipulation of Facts. Filed Feb. 8, 1934, Douglas H. Reed, Clerk.

28 And on the same day, to-wit: the 8th day of February, A. D. 1934, there was filed in the office of the Clerk of said Court, a General Issue, which said general issue plea was and now is in words and figures following, to-wit:

29 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—247D) * *

GENERAL ISSUE.

And the Defendants, by Walter E. Ackermann, their Attorney, come and defend the wrong and injury when, etc.; and say that they, nor either of them, did not promise in manner and form as the plaintiff as above thereof complained against them; and of this they put themselves upon the country, etc.

WALTER E. ACKERMANN.

Endorsed: No. 247-D. Harvey M. Wood, Admr. Est. of Walter Searles, deceased vs. The National Home for Disabled Volunteer Soldiers, Danville, Illinois, et al. General Issue. Filed Feb. 8, 1934, Douglas H. Reed, Clerk.

30 And afterwards, on to-wit: the 3rd day of January, A. D. 1935, the following further proceedings were had in said Court in said cause, and entered of record, to-wit:

31 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—247-D) * *

Plaintiff, as Administrator of the Estate of Walter Searles, Deceased, brought this suit to recover pension moneys that had accumulated to his credit in the hands of the treasurer at the Soldiers' Home from payments by the Pension Board prior to his death. The case was tried without a jury upon an agreed statement of facts.

The deceased was an inmate and member of the National Home for Disabled Volunteer Soldiers (now by Act of Congress, Veterans Administration Home of Danville, Illinois, which is bound by the "Contracts and obligations" of the predecessor), and died therein September 16, 1926 while a pensioner. Some $1500.00 had been paid by the Pension Bureau in monthly installments to the treasurer of the home in the way of pensions for the deceased, and this remained on deposit with the treasurer at the time of deceased's death for his credit. Other detailed facts appear in the stipulation.

Title 24, Section 136, U. S. Code (June 25, 1910) is as follows:

"The application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or
32 choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, * * * subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member.

Pursuant to said Section upon admission to the Home, the deceased contracted that all of his personal property should upon his death, should he leave no heirs, at once pass to the Board of Managers, subject to be reclaimed "by any legatee or person entitled to take the same by inheritance."

Moneys such as these, under Section 52, Title 24 U. S. Code enacted August 17, 1912 are not a part of the funds of the Home but held by the treasurer in trust for the pensioner and in case of his death for his legal heirs. Pertinent provisions of that section are as follows:

"The pensions of all inmates of the home, except such as shall be assigned as aforesaid, shall be paid to the treasurer of the home. The money thus derived shall not become a part of the funds of the home, but shall be held by the treasurer in trust for the pensioner to whom it would otherwise have been paid, and such part of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. * * * In case of the death of any pensioner, any pension money due him and remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years; otherwise the same shall escheat to the home."

Section 138 of Title 24 August 17, 1912 of the U. S. Code enacted simultaneously with Section 52, is as follows:

"All pensions and arrears of pensions payable or to be paid to pensioners who are or may become inmates of the National Home for Disabled Volunteer Soldiers shall be paid

to the Treasurers of said home, to be disbursed for the benefit of the pensioners without deduction for fines or penalties, under the rules and regulations of said home. Said payments shall be made by the Bureau of Pensions upon a certificate of the proper officer of the Home that the pensioner is an inmate thereof on the day to which said pension is drawn. The treasurers of said home, respectively, shall give security, to the satisfaction of the managers of said home, for the payment and application by them of all arrears of pension and pension moneys they may receive under the aforesaid
33 provision. Any balance of the pension which may remain at the date of the pensioner's discharge shall be paid over to him."

The next Section, 139, enacted July 1, 1902, is as follows:

"Any balance of pension money due a member of the National Home for Disabled Volunteer Soldiers at the time of his death shall be paid to his widow, minor children or dependent mother or father in the order named, and should no widow, minor child, or dependent parent be discovered within one year from the time of the death of the pensioner, said balance shall be paid to the post fund of the branch of said National Home of which the pensioner was a member at the time of his death, to be used for the common benefit of the members of the home under the direction of the Board of Managers, subject to future reclamation by the relatives designated in this section upon application filed with the Board of Managers within five years after the pensioner's death."

Under this Section, if it controlls, such accumulated funds, in case there is no widow, minor children or dependent parents, must be paid to the post fund of the Home.

It should be observed that there are certain earlier Acts. Thus, Section 2 of the Act of 1881, c. 80, is as follows:

"All pensions payable, or to be paid under this act, to pensioners who are inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the Treasurer or Treasurers of said home, upon security given to the satisfaction of the managers to be disbursed for the benefit of the pensioners without deduction for fines or penalties under regulations to be established by the managers of the home; said payment to be made by the pension agent upon a certificate of the proper officer of the home that the pensioner is an inmate thereof and is still living. Any balance of the pension which may remain at the date of the pensioner's discharge

shall be paid over to him; and in case of his death at the home, the same shall be paid to the widow, or children, or in default of either to his legal representatives."

This Act was expressly continued in force when a similar section, that of Section 1 of the Act of August 7, 1882, c. 433 was enacted. The latter is as follows:

34 "All pensions and arrears of pensions payable or to be paid to pensioners who are or may become inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the Treasurers of said Home, to be applied by such Treasurers as provided by law, under the rules and regulations of said home. Said payments shall be made by the pension agent upon a certificate of the proper officer of the home that the pensioner is an inmate thereof on the day to which said pension is drawn. The treasurers of said home, respectively, shall give security, to the satisfaction of the managers of said home, for the payment and application by them of all arrears of pension and pension-moneys they may receive under the aforesaid provision. And section two of the act entitled 'An act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June thirtieth, eighteen hundred and eighty-two, and for deficiencies, and for other purposes', approved February twenty-sixth, eighteen hundred and eighty-one, is hereby revived and continued in force."

These Sections have never been expressly repealed but are omitted from the United States Code. The annatator of the Code suggests that these provisions were probably superseded by Section 139 of the Code. Sections 52 and 136 are part of an Act of August 17, 1912, c. 301.

The enacting clause of the United States Code provides that the code shall establish prima facie the laws of the United States in force December 17, 1925 but that nothing in the act shall be construed as repealing or amending any such law or as enacting as new law any matter contained in the Code. It is further provided that in case of any inconsistency between the provisions of any section of the code and the corresponding portion of legislation theretofore enacted, effect shall be given for all purposes whatsoever to such prior enactments. Thus it is seen that by the enactment of the code and the exclusion therefrom of certain sections of prior legislation and the inclusion of others it is not intended to repeal any such excluded sections of prior legislation.

From this recital of the provisions of the various sections

it is apparent that, beginning with 1881, Congress has constantly given expression to an intent that pension
35 moneys paid to the treasurer of a Home for disbursement to an inmate of the Home should become and be the property of the inmate, and in case of his death, of his widow and children. Such was the provision of the Act of 1881, continued in full force by the Act of 1882, neither of which has ever been expressly repealed.

In this situation, on July 1, 1902 Section 139 was enacted. This Act did not purport to repeal the previously existing sections but did provide that "any balance of pension money due a member" at the time of his death should be paid "to his widow, minor children or dependent mother or father" and should no such relative be discovered, that the balance such be paid to the "post fund" subject to "reclamation by the relatives designated in this section" provided application be made within five years after pensioner's death. If it be admitted that this section impliedly repealed the provisions of the acts of 1881 and 1882 so that money and other property in the hands of the treasurer could pass only to the relatives designated in Section 139, we have left for determination the effect of the subsequent legislation of 1912. Thus we find that in Section 52, Congress expressly provided that the pensions of all inmates should be paid to the treasurer but should not become a part of the funds of the Home but should be held by the treasurer in trust for the pensioner and that in case of the death of any pensioner, any pension money due him and remaining in the hands of the treasurer should be paid to his legal heirs, if demand should be made within three years. Otherwise, the same would escheat to the Home. Section 136, likewise adopted in 1912, subsequent to the enactment of Section 139 provides that pension money and all moneys and choses in action held by the treasurer for the pensioner, if the latter should die leaving no heirs at
36 law or next of kin, should vest in the Board of Managers "subject to be reclaimed by any legatee or persons entitled to the same by inheritance at any time within five years after the death of such member."

The last expression of the legislative will must prevail and though implied repeals are not favored and must be established by clear and convincing evidence of an intention to repeal, the history of the legislation and the language of the last expression of the Congress demonstrate to the mind of this court beyond cavil that Sections 52 and 136 adopted in

1912 and expressly providing that the money collected by the treasurer for the benefit of the pensioner should be held in trust by the treasurer of the Home and paid to his heirs, legatees or next of kin, must prevail over the earlier act of 1910 seemingly but not clearly indicating a contrary intent.

If we are to give strict effect to the provisions of Section 139 and apply the same to the present case, then the purpose of Section 52 and 136, enacted later, is entirely nullified and Congress in enacting the same did a futile thing. Presumably Congress intended what it said and its language, being inconsistent with the previously existing legislation and plain and unambiguous, it follows that the plaintiff must prevail.

Judgment will enter for the amount of the deposit $1546.47 plus interest thereon at the rate of 5 per cent per annum since October 1, 1926, or $2223.02 and costs of suit.

Dated this 3rd day of January, A. D. 1935.

WALTER C. LINDLEY,
Judge.

Endorsed: At Law No. 247-D Harvey M. Wood, as Admr. Estate of Walter Searles, Dec'd. vs. The National Home for Disabled Volunteer Soldiers, Danville, Illinois, et al., Memo of the Court Filed and entered Jan. 3, 1935, D. H. Reed, Clerk.

37 And afterwards, on to-wit: the 19th day of January, A. D. 1935, there was filed in the office of the Clerk of said Court in said Cause, a Motion to Arrest Judgment, which said motion was and now is in words and figures following, to-wit:

38 IN THE DISTRICT COURT OF THE UNITED STATES.

MOTION TO ARREST JUDGMENT.

Comes now the defendant in the above entitled cause by its attorneys, Paul F. Jones, United States Attorney and Walter E. Ackermann, Assistant United States Attorney and moves the court to arrest judgment in the above cause for the following reasons:

I. That the finding of the court as of January 3, 1935 is contrary to the law which applies to the facts in the instant case.

II. That the finding of the court of January 3, 1935 is contrary to the laws of the United States as defined in Section 139, Title 24.

For the reasons submitted above the defendant respectfully moves the court to arrest judgment.

PAUL F. JONES,
United States Attorney.
By WALTER E. ACKERMANN,
Assistant United States Attorney.

Endorsed: No. 247-D in The District Court of the United States of America for the Eastern District of Illinois—Harvey M. Wood, As Administrator in the Estate of Walter Searles, deceased vs. The National Home for Disabled Volunteer Soldiers, Danville, Illinois, et al., Motion to Arrest Judgment—Filed Jan. 19, 1935—D. H. Reed, Clerk—Paul F. Jones, U. S. Attorney.

39 And on the same day, to-wit: the 19th day of January, A. D. 1935, the following further proceedings were had in said Court in said Cause and entered of record, to-wit:

40 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—247. D) * *

Present: Honorable Walter C. Lindley, Judge.

And now on this 19th day of January, A. D. 1935, come the defendants herein by their attorneys and present to the Court their Motion to Arrest Judgment, which motion is by the court overruled and to which ruling of the court an exception is allowed.

41 And afterwards on to-wit: the 24th day of January, A. D. 1935, there was filed in the office of the Clerk of said Court in said Cause, a Motion for New Trial, which said motion was and now is in words and figures following, to-wit:

42 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—247 D) * *

MOTION FOR NEW TRIAL.

Comes now the defendant, United States of America, in the above entitled cause and moves that the judgment of the court be set aside and it be granted a new trial in said cause for the following reasons:

I. That the judgment of the court is contrary to the law.

II. That the court has no jurisdiction over the subject matter and parties to this cause.

Wherefore, the defendant moves the court, for the reasons given above, to grant it a new trial.

PAUL F. JONES,
United States Attorney.
By WALTER ACKERMANN,
Assistant United States Attorney.

Endorsed: No. 247-D In the District Court of the Untied States of America for the Eastern District of Illinois—Harvey M. Wood, as Administrator in the Estate of Walter Searles, deceased, vs. The National Home for Disabled Volunteer Soldiers, Danville, Illinois, et al. Motion for New Trial—Filed Jan. 24, 1935—D. H. Reed, Clerk—Paul F. Jones, U. S. Attorney.

43 And on the same day, to-wit: the 24th day of January, A. D. 1935, the following further proceedings were had in said Court in said Cause and entered of record, to-wit:

44 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—247 D) * *

Present: Honorable Walter C. Lindley, Judge.

And now on this 24th day of January, A. D. 1935, come the defendants herein by their attorneys and present to the court their Motion for a New Trial, which motion is by the court overruled and to which ruling of the court an exception is allowed.

45 And afterwards, on to-wit: the 26th day of January, A. D. 1935, the following further proceedings were had in said Court in said Cause and entered of record, to-wit:

46 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—247 D) * *

ORDER OF JUDGMENT.

Final judgment is hereby rendered in favor of the plaintiff and against the defendants, the National Home for Disabled Volunteer Soldiers, a corporation, and the Veterans Administration, in the sum of Two Thousand One Hundred Eighty-four and 63/100 Dollars ($2184.63) and costs of suit.

Dated this 26th day of January, A. D. 1935.

WALTER C. LINDLEY,
Judge.

Endorsed: * * (Caption 247 D) * * Order of Judgment—Filed and entered January 26, 1935, D. H. Reed, Clerk.

56 And afterwards, on to-wit: the 4th day of February, A. D. 1935, there was filed in the office of the Clerk of said Court, in said cause, a Notice of Appeal, which said notice of appeal was and now is in words and figures following, to-wit:

57 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—247 D) * *

NOTICE OF APPEAL.

To Ray M. Foreman, Attorney for Plaintiff:

You are hereby notified that on February 2, 1935, or as soon thereafter as we can obtain a hearing before the court, we shall appear before the Honorable Walter C. Lindley at Danville, Illinois and shall present a petition for appeal in the United States Circuit Court of Appeals for the Seventh Circuit in behalf of the United States of America at which time and place you may appear if you see fit.

UNITED STATES OF AMERICA,
By PAUL F. JONES,
United States Attorney.

Received a copy of the foregoing notice on the 2 day of February, A. D. 1935.

RAY M. FOREMAN,
Attorney for Plaintiff.

Endorsed: * * (Caption—247 D) * * Notice of Appeal Filed Feb. 4, 1935—D. H. Reed, Clerk—Paul F. Jones, U. S. Attorney.

47 And afterwards, on to-wit: the 2nd day of February, A. D. 1935, there was filed in the office of the Clerk of said Court in said Cause, a Petition for Appeal, which said petition for appeal, was and now is in words and figures following, to-wit:

48 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—247 D) * *

PETITION FOR APPEAL.

Now comes the United States of America, defendant herein by Paul F. Jones, United States Attorney in and for the Eastern District of Illinois and respectfully appeals from the judgment entered by this court on January 26, 1935.

Wherefore, said defendant, United States of America prays that this Honorable Court enter an order granting an appeal from said judgment.

UNITED STATES OF AMERICA
By PAUL F. JONES,
United States Attorney.

Endorsed: * * (Caption—247 D) * * Filed Feb. 2, 1935 D. H. Reed, Clerk—Petition for Appeal—Paul F. Jones, U. S. Attorney.

51 And on the same day, to-wit: the 2nd day of February, A. D. 1935, there was filed in the office of the Clerk of said Court in said cause, Assignment of Errors, which said assignment of errors was and now is in words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—247 D) * *

ASSIGNMENTS OF ERROR.

Comes now the defendant, United States of America in the above entitled cause and files the following assignments of error upon which it will rely in the prosecution of the appeal herewith petitioned for from the judgment of the court entered on the 26th day of January, A. D. 1935.

1. That the judgment of the court is contrary to the law.
2. That the court has no jurisdiction over the subject matter and parties to this cause.

Wherefore, the defendant prays that the said judgment may be reversed and such other and further relief as to the court may seem just and proper.

UNITED STATES OF AMERICA,
By PAUL F. JONES,
United States Attorney.

Endorsed: In the District Court of the United States * * (Caption—247 D) * * Assignments of Errors Filed Feb. 2-1935. D. H. Reed, Clerk. Paul F. Jones, U. S. Attorney.

And afterwards, on to-wit: the 16th day of February, A. D. 1935, there was filed in the office of the Clerk of said Court in said cause, a Motion to Amend Assignment of Errors, which said motion was and now is in words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—247 D) * *

MOTION TO AMEND ASSIGNMENTS OF ERROR.

Comes now the defendant, United States of America in the above entitled cause and moves that it be permitted to amend the assignments of error which have been filed by adding the following:

3. That the court erred in allowing interest at the rate of

five percent per annum on the original amount $1546.47 which is contrary to the law, Section 284, Title 28, U. S. C. A.

UNITED STATES OF AMERICA,
By ARTHUR ROE,
United States Attorney.

Allowed.

LINDLEY,
Judge.

Endorsed: No. 247-D in the District Court of the United States of America for the Eastern District of Illinois—Harvey M. Wood, As Administrator of the Estate of Walter Searles, deceased, vs. The National Home for Disabled Volunteer Soldiers, Danville, Illinois, et al., Motion to Amend Assignment of Errors—Filed Feb. 16, 1935—H. D. Reed, Clerk —Arthur Roe, U. S. Attorney.

60 And on the same day, to-wit: the 16th day of February, A. D. 1935, the following further proceedings were had in said Court in said Cause, and entered of record, to-wit:

60½ IN THE DISTRICT COURT OF THE UNITED STATES.

For the Eastern District of Illinois.

Saturday, February 16th, A. D. 1935.

Present: Honorable Walter C. Lindley, Judge.

Harvey M. Wood, as Administrator of the Estate of Walter Searles, deceased
vs.
The National Home for Disabled Volunteer Soldiers, Danville, Illinois, *et al.*
} No. 247-D

And now on this 16th day of February, A. D. 1935, comes the defendant, United States of America, by its Attorney Arthur Roe, and presents to the court its motion for permission to amend the assignment of error filed herein on February 2nd, 1935, by adding another paragraph thereto,—which motion is by the court allowed.

49 And on the same day, to-wit: the 2nd day of February, A. D. 1935, the following proceedings were had in said Court in said cause, and entered of record, to-wit:

50 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—247 D) * *

ORDER ALLOWING APPEAL.

This day came the defendant, United States of America, defendant in the above cause, and files its petition for an appeal from the judgment heretofore entered by this court in this cause on January 26, 1935; and it appearing that the said defendant, United States of America has given due and proper notice of the filing of said petition for the allowance of an appeal;

It Is Hereby Ordered that an appeal be, and the same is hereby granted and allowed the defendant, United States of America from the judgment of this court in this cause on January 26, 1935; and that the Term of Court be extended until May 3, 1935 to file bill of exceptions and transcript of record in the Circuit Court of Appeals for the Seventh Circuit.

Entered this 2nd day of February, A. D. 1935.

WALTER C. LINDLEY,
U. S. District Judge.

Endorsed: In the District Court of the United States. * * (Caption—247 D) * * Order Allowing Appeal. Filed Feb. 2, 1935. D. H. Reed, Clerk.

53 And on the same day, to-wit: the 2nd day of February, A. D. 1935, there was filed in the office of said Clerk of said court in said cause, a Praecipe for Record, which said praecipe for record was and now is in words and figures following, to-wit:

54 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—247 D) * *

PRAECIPE FOR RECORD.

To the Clerk of the District Court of the United States for the Eastern District of Illinois:

You will please prepare the transcript of the record in the above entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, under the order of appeal heretofore allowed by said court, said record to include the following:

1. Affidavit of service, showing filing thereof.
2. Declaration of plaintiff and any amended declaration, showing filing thereof.
3. All pleas filed by the defendant, showing filing thereof.
4. All orders entered by the court in said cause.
5. Written judgment, showing filing thereof.
6. Notice of filing and presentment of petition for appeal with endorsement of counsel for plaintiff.
7. Order of appeal, showing filing thereof.
9. Petition for appeal, showing filing thereof.

55 10. Assignment of errors, showing filing thereof.

11. Citation for appeal, showing filing thereof.
12. Praecipe for record, showing filing thereof.
13. And all other pertinent records which are a part of this cause.

All of which is respectfully prayed for and requested.

UNITED STATES OF AMERICA,
By PAUL F. JONES,
United States Attorney.

Endorsed: Law No. 247-D. In the District Court of the United States of America for the Eastern District of Illinois. Harvey M. Wood, as Administrator of the Estate of Walter Searles, deceased, vs. The National Home for Disabled Volunteer Soldiers, Danville, Illinois, et al. Praecipe for Record. Filed Feb. 2, 1935. D. H. Reed, Clerk. Paul F. Jones, U. S. Attorney.

62 United States of America, } ss:
Eastern District of Illinois. }

I, D. H. Reed, Clerk of the United States District Court in and for the Eastern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original correct, full and complete transcript of the record and proceedings, in a cause entitled Harvey M. Wood, as Administrator of the Estate of Walter Searles, deceased vs. The National Home for Disabled Volunteer Soldiers, Danville, Illinois, et al., in Law No. 247-D, as fully as the same appears from the originals now on file and of record in my office as Clerk of said Court, and made in accordance with Appellant's Praecipe for Record, filed in said Cause.

And I further certify that the Citation with Return of Service Thereon, is the original Citation and Return of Service, filed and entered in said cause.
now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Danville this 22nd day of February, A. D. 1935.

D. H. Reed,
Clerk.

By Marie Burnett,
Deputy Clerk.

61 United States of America } ss:

The President of the United States to Harvey M. Wood as Administrator in the Estate of Walter Searles, Deceased, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to ..... filed in the Clerk's Office of the District Court of the United States for the Eastern District of Illinois, wherein The National Home for Disabled Volunteer Soldiers, Danville, Ill., the Veterans Administration, Home, Ralph W. Jones, as Accountant of said Home, Walter T. Christy as Special Disbursing Agent of said Home, and Ralph W. Jones, Treasurer of National Home for Disabled Volunteer Soldiers is appellant and you are Appellee to show cause, if any there be, why the Judgment rendered against the said Appellant as in the said Judgment mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Walter C. Lindley, Judge of the District Court of the United States, for the Eastern District of Illinois, this 2nd day of February, in the year of our Lord one thousand nine hundred and thirty-five.

WALTER C. LINDLEY,
Judge.

Service of Copy of the foregoing Citation is hereby acknowledge this 4th day of February, A. D. 1935.

RAY M. TRUMAN,
E. L. MCLAUGHLIN,
Attorneys for Appellee.

(Endorsed): District Court United States * * (Caption —247 D) * * Citation Returnable 22nd day of February, 1935. D. H. Reed, Clerk. Filed Feb. 4, 1935. D. H. Reed, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 33, inclusive, contain a true copy of the printed record, printed under my supervision, and filed on the eighth day of May, 1935, upon which the following cause was heard and determined:

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS, DANVILLE, ILLINOIS, THE VETERANS' ADMINISTRATION HOME, ET AL., APPELLANTS

vs.

HARVEY M. WOOD, AS ADMINISTRATOR OF THE ESTATE OF WALTER SEARLES, DECEASED, APPELLEE

No. 5477, October Term, 1935, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 28th day of April, A. D. 1936.

[SEAL] FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States court room in the City of Chicago, in said Seventh Circuit on the second day of October, 1934, of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-Four and of our Independence the One Hundred and Fifty-Ninth.

5477

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS, DANVILLE, ILLINOIS, THE VETERANS' ADMINISTRATION HOME, ET AL.

vs.

HARVEY M. WOOD, AS ADMINISTRATOR OF THE ESTATE OF WALTER SEARLES, DECEASED

Appeal from the District Court of the United States for the Eastern District of Illinois

And on, to-wit: On the fourteenth day of June, 1935, there was filed in the office of the clerk of this court a motion to dismiss, which said motion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS, DANVILLE, LLLINOIS, THE VETERANS' ADMINISTRATION, ET AL., APPELLANTS

vs.

HARVEY M. WOOD, AS ADMINISTRATOR OF THE ESTATE OF WALTER SEARLES, DECEASED, APPELLEE

On Appeal from the District Court of the United States for the Eastern District of Illinois

Motion to dismiss

Now comes Harvey M. Wood, as Administrator of the Estate of Walter Searles, deceased, the appellee herein, by Ray M. Foreman, Lawrence T. Allen, and Everett L. Dalbey, his attorneys, and files this his motion to dismiss the appeal of the cause herein and as reasons therefor, states:

(1) The National Home for Disabled Volunteer Soldiers, a Corporation, The Veterans' Administration, Ralph W. Jones, as accountant of said Veterans' Administration, Walter C. Christy, as Special disbursing agent of said Veterans' Administration, and Ralph W. Jones, as Treasurer of the National Home for Disabled Volunteer Soldiers, a Corporation, defendants herein, have each and all of them failed to file and have approved their bond for appeal in the cause herein, as provided by the laws of the United States and the rules of this court.

(2) That Rule 12 of the rules of the Circuit Court of Appeals for the Seventh Circuit provide that cost bonds in the District Court covering appeals taken to the Circuit Court of Appeals must be taken with good and sufficient sureties that the appellant will definitely prosecute his appeal to effect and answer all damages and costs if he fails to make his plea good, and the appellants herein, being the defendants in the District Court, have failed to file said bond.

HARVEY M. WOOD,
as Adm., Appellee.
By LAWRENCE T. ALLEN,
EVERETT L. DALBEY,
RAY M. FOREMAN,
Attorneys for Appellee.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States court room in the City of Chicago, in said Seventh Circuit on the first day of October, 1935, of the October Term in the year of our Lord One

Thousand Nine Hundred and Thirty-Five and of our Independence the One Hundred and Sixtieth.

And afterwards, to-wit: On the thirtieth day of October, 1935, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 30, 1935

Court met pursuant to adjournment

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. SAMUEL ALSCHULER, Circuit Judge; Hon. ROBERT C. BALTZELL, District Judge

5477

NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS, ET AL.

vs.

HARVEY M. WOOD, AS ADMINISTRATOR, ETC.

Appeal from the District Court of the United States for the Eastern District of Illinois

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Joseph A. Troy, Jr., and Mr. John M. George, counsel for appellants, and by Mr. Ray M. Foreman, counsel for appellee, and the court having heard the same takes this matter under advisement.

Leave is hereby granted appellee to file supplemental brief within 5 days.

And afterwards, to-wit: On the nineteenth day of *February, 1936*, there was filed in the office of the clerk of this court the opinion of the court, which said opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

October Term, 1935, January Session, 1936

No. 5477

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS, DANVILLE, ILLINOIS, THE VETERANS' ADMINISTRATION HOME, ET AL., APPELLANTS

vs.

HARVEY M. WOOD, AS ADMINISTRATOR OF THE ESTATE OF WALTER SEARLES, DECEASED, APPELLEE

Appeal from the District Court of the United States for the Eastern District of Illinois

February 19, 1936

Before EVANS and ALSCHULER, Circuit Judges, and BALTZELL, District Judge

ALSCHULER, Circuit Judge. The facts all appear by stipulation. Walter Searles, a veteran Union soldier of the Civil War, died intestate September 16, 1926, while an inmate of the Danville Branch of the National Home for Disabled Volunteer Soldiers, a corporation which by act of Congress became the Veterans' Administration Home of Danville, Illinois, bound by the obligations of its predecessor. He left no property save the hereinafter mentioned pension money. Surviving him is an only child, Herbert A., then about forty-five years old. Deceased left no widow or parent.

Deceased had long been receiving a soldier's pension, which, while he was an inmate of the home, was periodically paid to its treasurer for disbursement under applicable statutes and regulations. Upon his death, and after certain uncontested disbursements, there remained in the hands of the treasurer of the home a balance of such pension money of $1,546.47, to recover which the suit was brought by the administrator of the deceased for the benefit of Herbert. The court found for appellee and rendered judgment for the amount of the pension money, including interest thereon at five per cent. from date of death, and for costs.

The primary question is, to whom pension moneys in the hands of the treasurer of the home are payable on the death of the veteran while an inmate of the home.

Appellant contends that the applicable statute is 32 Stat. 564,[1] which was enacted July 1, 1902, and that under this section only a widow, minor child or dependent parent may take the balance of the pension money in the treasurer's hands; that Herbert was not one of the designated relatives who might claim, and that no action on his behalf would lie.

Appellee contends that the statute which governs is 36 Stat. 736,[2] adopted June 2, 1910, which provides that reclamation of personal property, which under that act passed to the home, might be made within five years after the death by a legatee or by persons who may take by inheritance.

The 1902 act had reference only to pension money, and did not apply to any other personal property of the soldier. It specified that these moneys shall become the property of the home if not claimed within five years from the death by one of the specified relatives. The 1910 act is far more comprehensive in its provisions. It deals with personal property of every kind of which the deceased inmate died possessed, specifically including "proceeds of pensions." It undertakes to prevent escheat to the state of all personal property left by the deceased, where he leaves no heirs at law or legatees who may take. But it does not stop with providing against escheat to the state: it goes further by definitely specifying that upon the death of all of his personal estate, including proceeds of pensions, shall go to the corporation, subject to reclamation within five years by legatees and persons who may take by inheritance. In this respect, as to pension money it enlarged the provisions of the prior act by specifying the permissible reclaimants as "any legatee or person entitled to take the same by inheritance"; whereas under the first act the pension money would pass to the corporation only in case the deceased soldier left no widow, minor child or dependent parent.

It seems to us that if this part of the 1910 statute does not intend to enlarge the class of persons who may reclaim pension money over the limitations thereon as imposed by the previous act, that part of

---

[1] "Hereafter any balance of pension money due a member of the National Home for Disabled Volunteer Soldiers at the time of his death shall be paid to his widow, minor children or dependent mother or father in the order named, and should no widow, minor child, or dependent parent be discovered within one year from the time of the death of the pensioner, said balance shall be paid to the post fund of the Branch of said National Home of which the pensioner was a member at the time of his death, to be used for the common benefit of the members of the Home under the direction of the Board of Managers, subject to future reclamation by the relatives hereinbefore designated, upon application filed with the Board of Managers within five years after the pensioner's death."

[2] "Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided."

the later act, when applied to pension money which it specifically includes, would have no force or effect whatever.

Our attention has been directed to the Congressional Record, Vol. 47, Part 7, pp. 7011, 7012, 7101, as indicating the intended scope of the act of 1910. True it is that the proponents of that measure did explain that it was intended to leave the soldier free to dispose of his personal property, including pension money, as he saw fit, and was directed to preventing escheat to the state in case of his death intestate without legatees or persons who may inherit from him. But, as has been shown, the act does provide that while the personal property, including pension money, passes to the Board of Managers of the home, reclamation may be made by those entitled to take by inheritance or by will without any restrictions upon members of that class; whereas the prior act limited those who might claim the pension money to widow, minor child and dependent parent. This change has no bearing on the matter of escheat to the state.

The Congressional Record does not indicate that any question was raised or discussed with respect to those who might reclaim pension money—whether those as generally specified in the proposed act, or the more limited class as provided in the earlier act. Neither does it appear that any distinction was suggested between the reclaiming of proceeds of pensions and of other personal property of the deceased. Considerable was said concerning the right of the soldier to dispose of his property as he saw fit, and assurance was given that no limitation upon this right was intended. In our judgment the discussion, far from indicating that the proposed act would hark back to previous legislation whereunder only certain of the heirs at law might claim it, indicated an intent that the soldier should have full right to dispose of his personal property, including pension money, by giving right of reclamation from the home to which it would pass under the terms of the proposed act, to the soldier's legatees or those entitled to take from him by inheritance, without continuance of the greater restriction of the prior act as to those who might thereunder reclaim pension money. This provision evidently met with the concurrence of those members who were apparently favorable to the soldier's fullest control of his property, including pension money, and probably for this reason it evoked no discussion. The right of reclamation thus fixed as to all his personal property, including pensions, in our judgment necessarily supplants the prior act so far as its class of claimants is more restricted. We conclude that the act of 1910 is here controlling, and that under it Herbert, the only child of his intestate father, although not a minor is entitled to reclaim this pension money.

We reach this conclusion with that reluctance and hesitation which of necessity is induced by the contrary view of the Circuit Court of Appeals for the First Circuit, as announced in Durack v. National Home for Disabled Volunteer Soldiers, 44 F. (2d) 516.

Under appellants' assignment of error "That the court has no jurisdiction over the subject matter and parties to this cause", they urge that the District Court had no jurisdiction to entertain the cause as against appellants. The reasoning is that the said Act of Congress of July 3, 1930, provides for the transfer of jurisdiction over property of those homes from the corporation to the Veterans' Administration, and authorizes suits for claims to be brought against the United States, and that therefore the action should have been brought against the United States and not against appellants. No such question was raised by the pleadings, and the stipulation of facts into which the parties entered specifies:

"(12) That the Court has jurisdiction of the parties plaintiff and defendant herein and of the subject matter hereof."

In the same brief appellants, in support of their contention that interest and costs were improperly allowed to appellee, said:

"This suit is in fact a suit against the United States. United States vs. Golden, 34 Fed. (2d) 376.

"In actions where any agency of the Government is a party, the court looks through the nominal party and treats the case as one in fact against the Government. State Highway Commission of Wyoming vs. Utah Const. Co., 278 U. S. 194, 49 S. Ct. 104, 73 L. Ed. 262; Schroeder v. Davis, 32 F. (2d) 455 (8 C. C. A.); Kansas v. United States, 204 U. S. 331, 27 S. Ct. 388, 51 L. Ed. 510; U. S. v. Golden, supra."

Accepting this view, we regard the action, though nominally against an agency of the United States, as in fact against the United States. The defense was undertaken and conducted solely by the United States Attorney and his official assistant, without in any way challenging the propriety of the action as brought, but, on the contrary, distinctly stipulating the jurisdiction of the court over parties and subject matter.

Appellants' insistence of error in the allowance of interest is not well grounded. The stipulation recites that shortly after the soldier's death demand was made, by or in behalf of Herbert on the Board of Managers of the home, for payment of the balance of this pension money. Holding as we do that he was entitled to reclaim it, the demand fixed his status as a reclaimant as of that time. It should then have been paid, and failing then to pay it the Board would have been liable for interest for the time payment was withheld.

Section 5 of said Act of July 3, 1930 (38 U. S. C. Sec. 11d (b)), permits allowance of interest against the United States where interest would have been allowable against the corporation before the passage of the act; and we find no error in this allowance of interest.

As to the costs, we are of opinion they should not have been adjudged against appellants, and this item should be eliminated from the judgment.

Except as to the item of costs, the judgment of the District Court is affirmed, and the District Court is directed to eliminate from the judgment the award of costs against appellants.

And on the same day, to-wit: On the nineteenth day of February 1936, the following further proceedings were had and entered of record, to-wit:

Wednesday, February 19, 1936

Court met pursuant to adjournment

Before Hon. Evan A. Evans, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Robert C. Baltzell, District Judge.

5477

The National Home for Disabled Volunteer Soldiers, Danville, Illinois, the Veterans' Administration Home, Ralph W. Jones, as Accountant of Said Home, Walter T. Christy as Special Disbursing Agent of Said Home, and Ralph W. Jones, Treasurer of National Home for Disabled Volunteer Soldiers

vs.

Harvey M. Wood, as Administrator of the Estate of Walter Searles, Deceased

Appeal From the District Court of the United States for the Eastern District of Illinois

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Illinois, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this court that except as to the item of costs, the judgment of the said District Court in this cause be, and the same is hereby affirmed, with interest from the date of the judgment of the said District Court until paid, at the same rate that similar judgments bear in the courts of the State of Illinois; and that this cause be, and the same is hereby remanded to the said District Court with direction to eliminate from the judgment the award of costs against appellants.

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 11, inclusive, contain a true copy of the Motion to Dismiss, filed June 14,

1935; Hearing, entered October 30, 1935; Opinion, filed February 19, 1936, and Judgment entered February 19, 1936, in the case of

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS, DANVILLE, ILLINOIS, THE VETERANS' ADMINISTRATION HOME, ET AL., APPELLANTS

vs.

HARVEY M. WOOD, AS ADMINISTRATOR OF THE ESTATE OF WALTER SEARLES, DECEASED, APPELLEE

No. 5477, October Term, 1935, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 28th day of April, A. D. 1936.

[SEAL] FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1936

Supreme Court of the United States

Order allowing certiorari

Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○